

7-17-2012

## State v. Favini Appellant's Brief Dckt. 39123

Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/not\\_reported](https://digitalcommons.law.uidaho.edu/not_reported)

---

### Recommended Citation

"State v. Favini Appellant's Brief Dckt. 39123" (2012). *Not Reported*. 460.  
[https://digitalcommons.law.uidaho.edu/not\\_reported/460](https://digitalcommons.law.uidaho.edu/not_reported/460)

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).

COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	NO. 39123
	)	
v.	)	
	)	
RONALD STANLEY FAVINI,	)	APPELLANT'S BRIEF
	)	
Defendant-Appellant.	)	
_____	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF KOOTENAI

HONORABLE JOHN T. MITCHELL  
District Judge

SARA B. THOMAS  
State Appellate Public Defender  
State of Idaho  
I.S.B. #5867

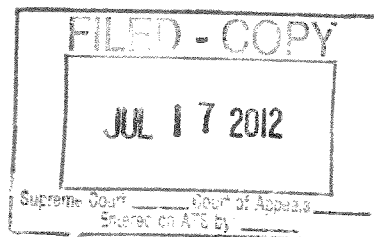
ERIK R. LEHTINEN  
Chief, Appellate Unit  
I.S.B. #6247

JASON C. PINTLER  
Deputy State Appellate Public Defender  
I.S.B. #6661  
3050 N. Lake Harbor Lane, Suite 100  
Boise, ID 83703  
(208) 334-2712

ATTORNEYS FOR  
DEFENDANT-APPELLANT

KENNETH K. JORGENSEN  
Deputy Attorney General  
Criminal Law Division  
P.O. Box 83720  
Boise, Idaho 83720-0010  
(208) 334-4534

ATTORNEY FOR  
PLAINTIFF-RESPONDENT



## TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES .....	ii
STATEMENT OF THE CASE .....	1
Nature of the Case.....	1
Statement of the Facts and Course of Proceedings .....	1
ISSUES PRESENTED ON APPEAL .....	4
ARGUMENT .....	5
I. The District Court Violated Mr. Favini's Fifth Amendment Privilege Against Self-Incrimination When It Improperly Used Information Obtained For Purposes Of Determining Mr. Favini's Competency, During The Jurisdictional Review Hearing .....	5
A. Introduction .....	5
B. The District Court Violated Mr. Favini's Fifth Amendment Privilege Against Self-Incrimination When It Improperly Used Information Obtained For Purposes Of Determining Mr. Favini's Competency, During The Jurisdictional Review Hearing .....	5
II. The District Court Abused Its Discretion By Imposing An Excessive Sentence In Light Of The Mitigating Factors That Exist In This Case.....	9
A. Introduction .....	9
B. The District Court Abused Its Discretion By Imposing An Excessive Sentence In Light Of The Mitigating Factors That Exist In This Case .....	9
CONCLUSION.....	12
CERTIFICATE OF MAILING .....	13

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Estelle v. Smith</i> , 451 U.S. 454 (1981).....	5, 6
<i>Estrada v. State</i> , 143 Idaho 558 (2006).....	5, 8
<i>Hollon v. State</i> , 132 Idaho 573 (1999).....	11
<i>Mitchell v. United States</i> , 562 U.S. 314 (1999).....	5
<i>State v. Broadhead</i> , 120 Idaho 141 (1991).....	9
<i>State v. Brown</i> , 121 Idaho 385 (1992).....	9
<i>State v. Jackson</i> , 130 Idaho 293 (1997).....	9
<i>State v. James</i> , 112 Idaho 239 (Ct. App. 1986).....	11
<i>State v. Jockumsen</i> , 148 Idaho 817 (Ct. App. 2010).....	6, 8
<i>State v. Lankford</i> , 116 Idaho 860 (1989).....	5
<i>State v. Odiaga</i> , 125 Idaho 384 (1994).....	11
<i>State v. Perry</i> , 150 Idaho 209 (2010).....	6
<i>State v. Reinke</i> , 103 Idaho 771 (Ct. App. 1982).....	9
<i>State v. Shideler</i> , 103 Idaho 593 (1982).....	11

### **Statutes**

I.C. § 18-215.....	8
--------------------	---

## STATEMENT OF THE CASE

### Nature of the Case

Ronald Favini appeals from the district court's Sentencing Disposition and Notice of Right to Appeal. Mr. Favini asserts that the district court violated his Fifth Amendment right to be free from self-incrimination when the district court used information contained in a competency evaluation against him during his jurisdictional review hearing, requiring his sentence to be vacated and a new review hearing ordered. Alternatively, Mr. Favini asserts that his ultimately-imposed unified sentence of fifty years, with five years fixed, stemming from a jury finding him guilty of aggravated battery and the district court finding him to be a persistent violator, was excessive in light of the mitigating factors that exist in this case.

### Statement of the Facts and Course of Proceedings

The State filed a Criminal Complaint alleging that Mr. Favini committed the crime of aggravated battery. (R., pp.7-8.) Mr. Favini waived his right to a preliminary hearing, was bound over into the district court, and an Information was filed charging him with the above-crime. (R., pp.30-34.) In addition, Part II of the Information alleged that Mr. Favini used a deadly weapon while committing the aggravated battery, and Part III of the Information alleged that Mr. Favini was a persistent violator of the law. (R., pp.33-34.) Mr. Favini was found guilty by a jury of having committed the aggravated battery (and, based upon the jury instructions, of having used a deadly weapon during the commission of that crime) and the district court found that Mr. Favini

had at least two prior felony convictions making him a persistent violator. (R., pp.115, 119, 133-134; Tr., p.261, L.1 – p.274, L.1.)<sup>1</sup>

At the conclusion of the trial, counsel for Mr. Favini requested that a mental health evaluation be prepared pursuant to Idaho Code § 19-2524, and the district court granted that request. (R., p.135; Tr., p.275, L.3 – p.277, L.20.) Later, but still prior to sentencing, counsel for Mr. Favini requested that a competency evaluation be conducted pursuant to I.C. § 18-211, an evaluation was conducted, and Mr. Favini was deemed legally competent. (R., pp.138-142; Exhibits, pp.79-83.)<sup>2</sup> During the sentencing hearing, the State asked the court to impose a unified sentence of thirty years, with ten years fixed, while counsel for Mr. Favini requested that the court retain jurisdiction. (Tr. p.293, Ls.3-7, p.297, Ls.13-19.) The district court imposed a unified sentence of fifty years, with fifteen years fixed, and retained jurisdiction for 365 days. (R., pp.146-151; Tr. p.304, L.18 – p.305, L.11.) Mr. Favini filed a timely Notice of Appeal. (Augment: Notice of Appeal)<sup>3</sup>

After approximately seven months of programming, the Department of Correction recommended that the district court relinquish jurisdiction. (Augmentation: Addendum to the Presentence Investigation Report (*hereinafter*, APSI).)<sup>4</sup> During the

---

<sup>1</sup> Two sets of transcripts were created for this appeal. The transcript containing the jury trial and sentencing hearing will be referred to as “Tr.” while the transcript containing the jurisdictional review hearing will be referred to as “Tr. Supp.” herein.

<sup>2</sup> The Presentence Investigation Report and related documents, the I.C. § 19-2524 Evaluation, the I.C. § 18-211 Evaluation, and trial exhibits are all contained in the electronic file “39123 State v. Favini Exhibits.” Citations to these documents will contain the heading “Exhibits” and the page number(s) associated with the electronic file.

<sup>3</sup> Mr. Favini has filed a motion to augment the record with a copy of the Notice of Appeal filed in this case. The motion to augment the record is currently pending.

<sup>4</sup> This Court granted Mr. Favini’s motion to augment the record with the Addendum to the Presentence Investigation Report dated April 13, 2012, as well as other pertinent documents. See Order Granting Motion to Augment and to Suspend the Briefing Schedule, dated June 5, 2012.

jurisdictional review hearing, the State recommended that the district court relinquish jurisdiction and reduce Mr. Favini's sentence to a unified term of twenty-five years, with five years fixed, while counsel for Mr. Favini asked the court to continue retaining jurisdiction so that Mr. Favini could continue to work towards rehabilitation with an emphasis on his mental health condition, and echoed the prosecutor's request for a reduced sentence. (Tr. Supp., p.10, L.23 – p.15, L.1.) In explaining its reasoning, the district court stated that it did not have any evidence of a mental health condition that "causes [Mr. Favini] to have that antisocial behavior," and the court specifically cited to the conclusions reached in the I.C. § 18-211 competency evaluation. (Tr. Supp., p.15, L.2 – p.18, L.24.) The district court ultimately relinquished jurisdiction but reduced Mr. Favini's sentence to a unified term of fifty years, with five years fixed. (Augmentation: Retained Jurisdiction Disposition and Notice of Right to Appeal;<sup>5</sup> Tr. Supp., p.15, Ls.2-12.)

---

<sup>5</sup> See fn. 3, above.

## ISSUES

1. Did the district court violate Mr. Favini's Fifth Amendment privilege against self-incrimination when it improperly used information obtained for purposes of determining Mr. Favini's competency, during the jurisdictional review hearing?
2. Did the district court abuse its discretion by imposing an excessive sentence in light of the mitigating factors that exist in this case?



## ARGUMENT

### I.

#### The District Court Violated Mr. Favini's Fifth Amendment Privilege Against Self-Incrimination When It Improperly Used Information Obtained For Purposes Of Determining Mr. Favini's Competency, During The Jurisdictional Review Hearing

##### A. Introduction

Mr. Favini asserts that the district court improperly considered the conclusions contained within his competency evaluation, which were based in part on statements that he made during the competency evaluation, as an aggravating circumstance when determining Mr. Favini's sentence during the jurisdictional review hearing.

##### B. The District Court Violated Mr. Favini's Fifth Amendment Privilege Against Self-Incrimination When It Improperly Used Information Obtained For Purposes Of Determining Mr. Favini's Competency, During The Jurisdictional Review Hearing

The Fifth Amendment to the United States Constitution guarantees that "No person . . . shall be compelled in any criminal case to be a witness against himself." This safeguard against compelled self-incrimination applies to both the guilt and penalty phases of a trial. *Mitchell v. United States*, 562 U.S. 314, 325-27 (1999); *Estelle v. Smith*, 451 U.S. 454, 462-63 (1981); *Estrada v. State*, 143 Idaho 558, 563-64 (2006); *State v. Lankford*, 116 Idaho 860, 871-72 (1989). A competency evaluation ordinarily does not implicate the Fifth Amendment because any disclosures made by the defendant are not used against him but are used only for the limited purpose of determining whether he is competent to proceed. See *Estelle*, 451 U.S. at 465. Fifth Amendment rights come into play, however, if disclosures made during a competency evaluation or conclusions derived from such disclosures, are later used against the defendant either during the guilt phase or to determine the appropriate sentence. *Id.*

Thus, generally speaking neither statements made by an accused during a competency evaluation, nor psychiatric opinions derived therefore, may be admitted against a defendant for sentencing purposes, unless the defendant was advised of the right against self-incrimination and waived that right. *Estelle*, 451 U.S. at 469; *State v. Jockumsen*, 148 Idaho 817, 820 (Ct. App. 2010).

Mr. Favini acknowledges that he did not raise these concerns to the district court during the jurisdictional review hearing, although it does not appear that he had any forewarning from the district court that the court would use his competency evaluation against him, as the court had not mentioned that evaluation during his original sentencing hearing, and made reference to the report only after the court had actually pronounced its sentence. (Tr. Supp., p.15, L.2 – p.18, L.24; See also Tr., p.286, L.1 – p.308, L.13.) Nevertheless, Mr. Favini's claim may still be addressed pursuant to Idaho's fundamental error doctrine. Where a defendant seeks to raise an issue on appeal not preserved in the district court:

(1) the defendant must demonstrate that one or more of the defendant's unwaived constitutional rights were violated; (2) the error must be clear or obvious, without the need for any additional information not contained in the appellate record, including information as to whether the failure to object was a tactical decision; and (3) the defendant must demonstrate that the error affected the defendant's substantial rights, meaning (in most instances) that it must have affected the outcome of the trial proceedings.

*State v. Perry*, 150 Idaho 209, 226 (2010).

In the present case, Mr. Favini meets the *Perry* fundamental error standard. Prior to sentencing, Mr. Favini participated in both an I.C. § 19-2524 mental health evaluation, and an I.C. § 18-211 competency evaluation. (Exhibits, pp.71-83.) Dr. Parkman was the author of the 18-211 evaluation and relied, at least in part, upon statements made by Mr. Favini in ultimately reaching her conclusion that Mr. Favini was

competent to proceed. (Exhibits, pp.79-83.)<sup>6</sup> Within two months of arriving at North Idaho Correctional Institution, Mr. Favini's case manager requested the assistance of a mental health clinician to determine whether the Therapeutic Community program was appropriate for him. (Augmentation: APSI, p.3.) Mr. Favini met with a mental health counselor "on several different occasions during his incarceration at NICI." *Id.* It was clear that Mr. Favini "displayed some inappropriate and disconcerting behavior patterns" including telling a program facilitator a story about how "he and his girlfriend were guinea pigs and that they were injected with dyes that would make their skin glow and that he would be given different drugs and that he would wake up reading 'it' on a crack pipe." *Id.*

However, after pronouncing its sentence, the district court stated, "I'm not seeing anything now that would indicate that your mental concerns are anything – any more legitimate than the concerns that you and your attorney argued at the time of sentencing, and I'll talk more about that here in a minute." (Tr. Supp., p.15, L.2 – p.16, L.2.) The district court went on to discuss its view of Mr. Favini's mental health condition and the court's own feeling that it does not contribute to Mr. Favini's "antisocial behavior," and further stated the following:

You have been given several mental health evaluations, and none of them show any mental illness that would explain your conduct. We have a report from Amanda Wilson, a mental health screening evaluation, the diagnosis of malingering and an antisocial personality disorder, in addition to your alcohol dependence and your cocaine dependence and your amphetamine dependence, and that was regarding her evaluation of you April 26, 2011. **A couple of months later, June 13<sup>th</sup>, 2011, Dr. Parkman, a psychologist, diagnosed you essentially similarly with personality disorder, not otherwise specified, with marked borderline, schizotypal and antisocial features in addition to your**

---

<sup>6</sup> For example, Dr. Parkman noted "Although Ron engaged in colorful reminiscing about his drug experiences in this examination and some obvious evasions, he did not appear to be attempting to malingering." (Exhibits, p.81.)

**poly-substance dependence, generalized anxiety disorder, mood disorder, and then – I think that was the extent of the mental health evaluations.**

(Tr. Supp., p.18, Ls.1-15 (emphasis added).)

It is abundantly clear that the district court used the conclusions reached by Dr. Parkman in the 18-211 evaluation against Mr. Favini during the jurisdictional review hearing, wherein the court was to determine the appropriate sentence. Dr. Parkman's conclusions were derived, at least in part, from statements that Mr. Favini made to Dr. Parkman. Therefore, Mr. Favini's Fifth Amendment right to be free from self-incrimination was violated by the district court. This Constitutional right was not waived by Mr. Favini and, in fact, his statements were made with the promise that they would not be used against him. See I.C. § 18-215. Nothing in the record supports a finding that defense counsel's failure to object was a strategic decision especially considering the fact that the district court did not mention Dr. Parkman's conclusions until *after* the district court had pronounced its sentence. Finally, it is clear that the district court used the 18-211 evaluation in aggravation of Mr. Favini's sentence finding that his mental health issues did not explain his behavior. Mr. Favini asserts that he has met his burden of proving fundamental error in the district court's use of the § 18-211 evaluation against him.

Mr. Favini further asserts that his case should be remanded for a new sentencing hearing in front of a new district court judge, with instructions that the court not use the information contained in the § 18-211 evaluation against Mr. Favini. *C.f. Jockumsen*, 148 Idaho at 822-823, *Estrada* 143 Idaho at 563-65 (2006).

## II.

### The District Court Abused Its Discretion By Imposing An Excessive Sentence In Light Of The Mitigating Factors That Exist In This Case

#### A. Introduction

Mr. Favini was convicted of cutting the hand of another individual, in the web between the thumb and forefinger, with a small pocket knife, leaving a one inch scar. (Exhibit, pp.2-3.) He asserts that his unified sentence of fifty years, with five years fixed, is excessive in light of the mitigating factors that exist in this case.

#### B. The District Court Abused Its Discretion By Imposing An Excessive Sentence In Light Of The Mitigating Factors That Exist In This Case

Mr. Favini asserts that, given any view of the facts, his unified sentence of fifty years, with five years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. See *State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Favini does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Favini must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of

society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Ronald Favini is mentally ill.<sup>7</sup> When he was fourteen years old, he got into a car accident resulting in head trauma. (Exhibits, p.14.) In addition to the erratic behavior observed by NICI staff noted above, Mr. Favini has long history of treatment from mental health providers in both Washington and Idaho. (Exhibits, pp.14-15, 23-55.) He has received a smorgasbord of diagnoses in the past including, Delusional Disorder, Bipolar Disorder, Mood Disorder, Schizoaffective Disorder, Paranoid Psychosis, and Seizure Disorder, as well as a long, documented history of drug abuse which likely plays some role in his mental health. *Id.* In 2007, Mr. Favini was involuntarily committed by the State of Washington for 90 days of mental health treatment. (Exhibits, pp.35-38.) In addition to noting his long history of mental illness, the PSI writer noted that Mr. Favini's mental status began to erode about 2/3rds of the way through the very interview the writer conducted with Mr. Favini in preparation for that report. (Exhibits, p.18.) Mr. Favini expressed a desire for continued mental health treatment. (Exhibits, p.14.)

Mr. Favini's mental health and the prescription drugs he had consumed to treat his conditions, in combination with the large amount of alcohol that he consumed, no

---

<sup>7</sup> Despite a mountain of evidence to the contrary, the licensed clinical social worker who conducted the I.C. § 19-2524 mental health evaluation concluded that Mr. Favini was malingering and does not have any mental illness under Idaho law, based upon his performance on the M-FAST (the sole test administered) and his clinical interview, which began with Mr. Favini questioning the licensed clinical social worker's qualifications to conduct such an evaluation. (Exhibits, pp.72-78.)

doubt played a major role his actions that led to his conviction. (Exhibits, pp.2-4.) The victim himself, Jeremy George, acknowledged that he too was intoxicated on the night of their scuffle, that he held no ill will towards Mr. Favini, and that Mr. Favini should be punished only “in some way.” (Exhibits, pp.2-3.) Mr. Favini stated:

I thank God that the victim Jeremy George was not hurt any Further by my behavior And or actions, and because of this behavior I owe Jeremy George An apology! I hope he can Find it within his heart too Forgive me. I also ask my mother and Father for their forgiveness in putting the Family through All of this madness. I'm sorry. (Sic).

(Exhibits, p.20.) The PSI writer noted that Mr. Favini seemed sincere in his remorse. (Exhibits, p.3.)

Mr. Favini's criminal history is as long as his history of mental illness (Exhibits, pp.4-9) and certainly could be considered by the district court when determining an appropriate sentence. However, Mr. Favini's sentence is simply disproportionate to the crime he committed especially considering the mitigating factors that exist in this case. Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999) (citing *State v. Odiaga*, 125 Idaho 384, 391 (1994)). Furthermore, rehabilitation is an important factor which should be considered by the district court. See *State v. James*, 112 Idaho 239, 243-44 (Ct. App. 1986) (holding that “rehabilitation and health problems are factors to consider in a motion for reduction in a sentence”). The court also must consider a defendant's remorse and/or regret for committing the crime. See *State v. Shideler*, 103 Idaho 593, 595 (1982). Mr. George testified that he received eight stitches in his hand as a result of Mr. Favini's actions. (Tr. p.144, Ls.4-8.) The district court sentenced Mr. Favini for up to more than 6 years in prison per stitch. In light of Mr. Favini's long history of mental illness and his desire for treatment, as well as his genuine remorse for

having committed the crime, his sentence of fifty years, with five years fixed (which is twice the total sentence recommend by the prosecutor during the jurisdictional review hearing), is excessive.

#### CONCLUSION

Mr. Favini respectfully requests that this Court remand his case for a new sentencing hearing, in front of a different district court, with instructions that the district court not consider information obtained from the competency evaluation. Alternatively, Mr. Favini respectfully requests that this Court reduce his sentence to a unified term of twenty-five years, with five years fixed, or otherwise as this Court deems appropriate.

DATED this 17<sup>th</sup> day of July, 2012.

  
\_\_\_\_\_  
JASON C. PINTLER  
Deputy State Appellate Public Defender



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 17<sup>th</sup> day of July, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

RONALD STANLEY FAVINI  
INMATE #100495  
KOOTENAI COUNTY JAIL  
PO BOX 9000  
COEUR D ALENE ID 83816

JOHN T MITCHELL  
DISTRICT COURT JUDGE  
E-MAILED BRIEF

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
CRIMINAL DIVISION  
PO BOX 83720  
BOISE ID 83720-0010

Hand delivered to Attorney General's mailbox at Supreme Court.

  
EVAN A. SMITH  
Administrative Assistant

JCP/eas